

# Antitrust for IP Lawyers: Mergers

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# A Few Points to Bear in Mind About Mergers

- About 99% of mergers go through unchallenged.
- Many of the others can be restructured to solve the competitive problem.
- Most of the problems come about when one firm acquires a direct horizontal competitor in a concentrated market.

# The Simplest Case

- Acquisition of a direct horizontal competitor
- How much other competition is there?
- How easy is it to enter?
- Are there merger-specific efficiencies?

# Acquisitions of Patents

- Can be the equivalent of acquisition of a firm or its key assets.

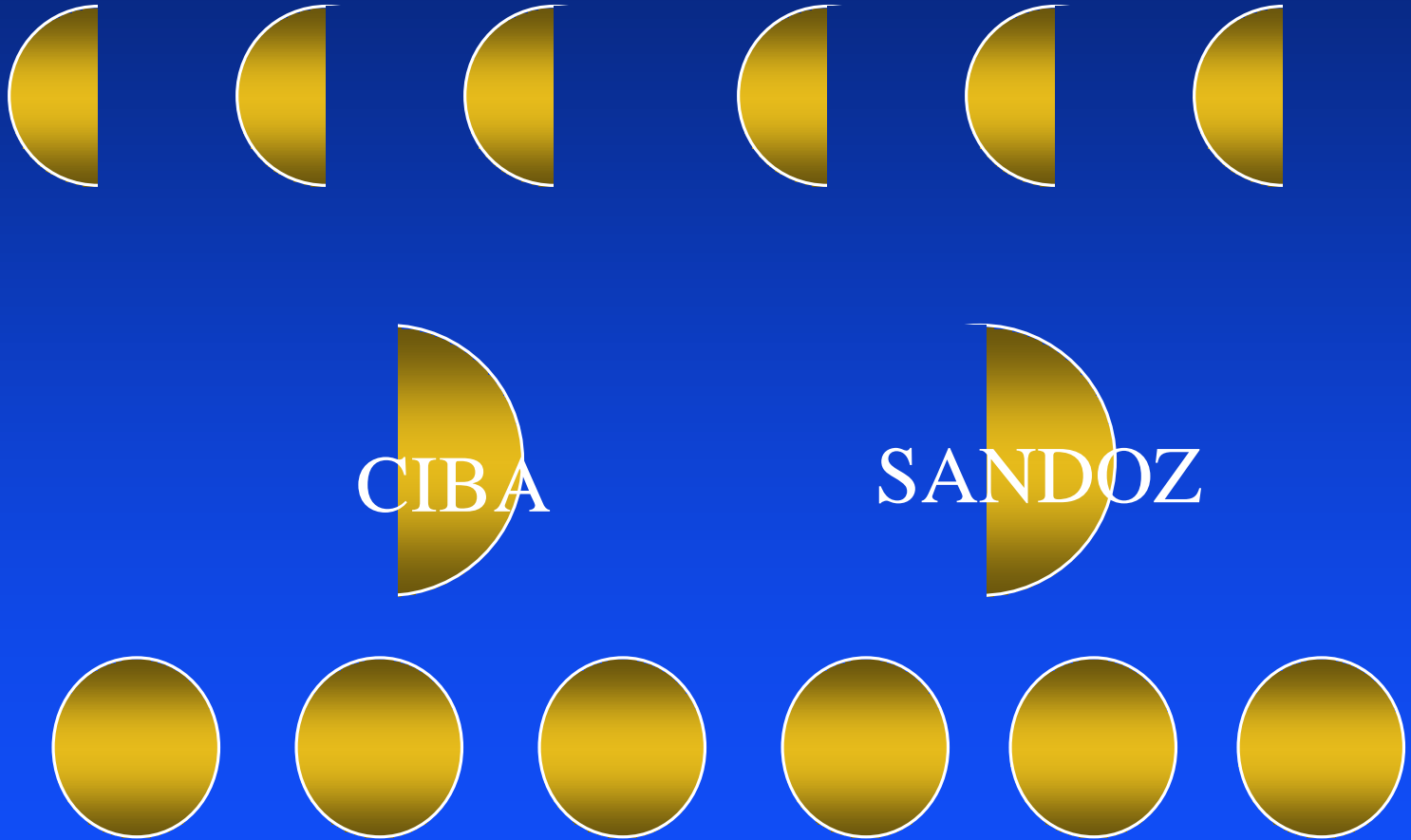
# Exclusive Licenses of Patents

- Substantively, can be analyzed as a merger
- May also be reportable under the Hart-Scott-Rodino Act
  - ◆ Valuation issues can be tricky.
    - ◆ Milestone payments
    - ◆ Per-unit royalties
    - ◆ Can discount for probability of occurrence
    - ◆ Cannot discount for time value of money

# Acquisitions Where Products Have Not Yet Been Commercialized

- SCM v. Xerox
- Pharmaceutical pipeline mergers

# Bottleneck in a Complement



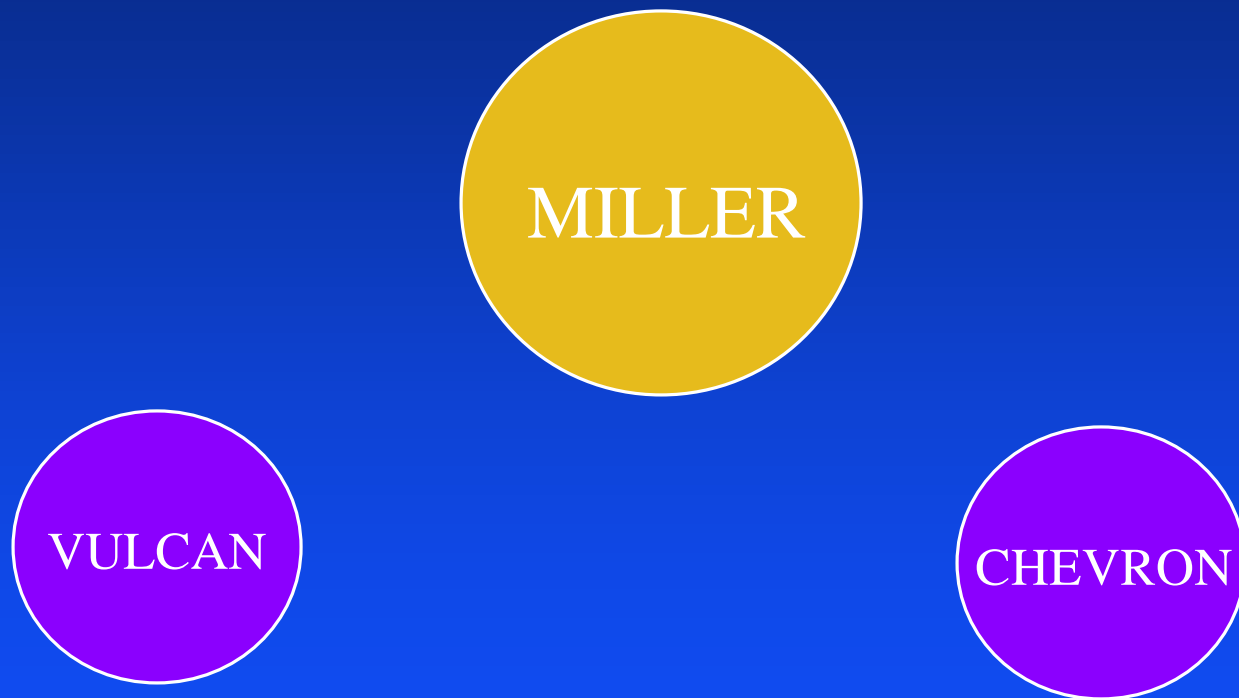
# Innovation Markets

- Tempest in a teapot
- Only where specialized assets or characteristics are scarce



# Intellectual Property as a Defense in Mergers Involving Tangible Assets

# When is a Horizontal Merger Non-horizontal?



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